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April 20, 2015

VIA ECF Filing

Hon. Joseph C. Spero
Chief United States Magistrate Judge
United States District Court
District of Northern California
450 Golden Gate Avenue
San Francisco, CA 94102

Re: In re Optical Disk Drive Antitrust Litig., Case No. 3:10-md-2143-RS (JCS)

Dear Chief Magistrate Judge Spero:

This firm represents non-party John Doe 1, an employee of Defendant Toshiba Samsung Storage Technology Korea Corporation (“TSSTK”). We write regarding the hearing on the supplemental protective order scheduled for this Friday, April 24, 2015. We believe this hearing is premature given the status of Mr. Doe’s pending, expedited appeal before the Ninth Circuit, and we respectfully request that this Court continue the hearing until after that appeal has been resolved.

On December 22, 2014, Mr. Doe filed a Notice of Appeal and an Emergency Motion for Injunction Pending Appeal in the Ninth Circuit, seeking a reversal of, *inter alia*, this Court’s order denying his motion to quash a subpoena dated July 11, 2014 (the “Subpoena”), served on the Antitrust Division of the United States Department of Justice (“DOJ”). (Dkts. 1452, 1466.) That same day, the duty attorney at the Ninth Circuit requested that Mr. Doe’s counsel ask DOJ if it would voluntarily withhold production of the subpoenaed materials until such time as the Ninth Circuit had an opportunity to rule on the emergency motion. DOJ responded that it agreed not to produce the recordings. *See* Ex. 1: E-mail from I. Deiss dated Dec. 22, 2014. The duty attorney then requested that Mr. Doe’s counsel inform her in the event of any change in circumstances, to ensure that the Ninth Circuit would have an opportunity to act on the motion before any production rendered it moot.

Thereafter, on January 30, 2015, the Ninth Circuit expedited the briefing schedule on Mr. Doe's appeal and denied Mr. Doe's emergency motion "without prejudice to renewal after the district court has approved a protective order governing the release of the recordings in dispute." Ex. 2: Order dated Jan. 30, 2015. Based on that expedited briefing schedule, as of today, the parties have fully briefed Mr. Doe's appeal and it is pending before the Ninth Circuit.

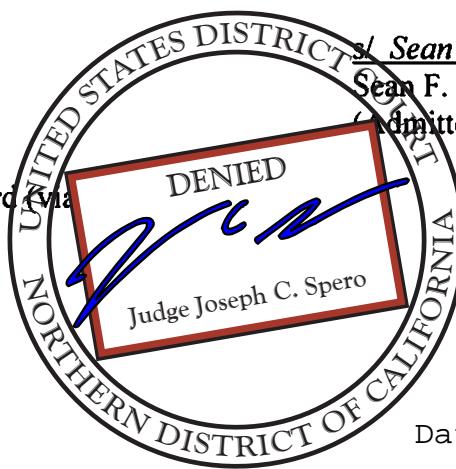
The clear intent of the Ninth Circuit's order was to resolve the underlying issues on the merits and through full briefing, before any production rendered it moot. However, to the extent that the hearing goes forward this Friday and results in the entry of a supplemental protective order, that will force Mr. Doe to file another emergency motion with the Ninth Circuit to preserve the issues on appeal, and alert the Ninth Circuit to the change in circumstances. That process will result in an inefficient and piecemeal adjudication of the issues presented—at a time when the Ninth Circuit has made clear its preference to resolve Mr. Doe's appeal on the merits and on its own expedited timetable.

We apologize for raising this issue with the Court a relatively short time before the scheduled hearing. Until today, our attention had been focused on briefing the Ninth Circuit appeal. We realized and wanted to raise this issue now so that those parties traveling for any hearing have sufficient time to alter their plans. We have reached out to the other parties to seek their agreement to this request. TSSTK consents to the requested continuance. Ex. 3: E-mail from B. Lee dated Apr. 20, 2015. DOJ takes no position in opposition to the requested continuance. Ex. 4: E-mail from I. Deiss dated Apr. 20, 2015. On the other hand, the Plaintiffs object because they believe that there should be one protective order entered with respect to the Subpoena, and that entry now is necessary to ensure materials unrelated to John Doe 1 can be produced immediately. Ex. 5: E-mail chain dated Apr. 20, 2015. However, Plaintiffs' position ignores that entry of a protective order will needlessly burden the Ninth Circuit with additional motion practice related to an appeal which has already been fully briefed.

For the foregoing reasons, we respectfully request that the Court continue *sine die* the discovery hearing currently scheduled for this Friday, April 24, 2015, without prejudice to an application to reschedule it after the Ninth Circuit has ruled on Mr. Doe's pending appeal.

Very truly yours,

cc: All Counsel of Record (via e-mail)



Dated: April 21, 2015